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Briefing Report to the Chairwoman, Subcommittee on Government Activities and Transportation, Committee on Government Operations House of Representatives

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INTERSTATE COMMERCE

ICC Acts to Improve Its Enforcement Program

GAO/RCED-86-196BR

GAO

United States
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Resources, Community, and
Economic Development Division

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August 6, 1986

The Honorable Cardiss Collins
Chairwoman, Subcommittee on Government
Activities and Transportation
Committee on Government Operations
House of Representatives

Dear Madam Chairwoman:

In response to your request of May 30, 1986, this briefing report provides information on actions taken by the Interstate Commerce Commission (ICC) since 1984 to strengthen its enforcement program and other related matters. ICC regulates the economic activities of interstate rail and motor carriers, including their authority to operate and the rates they charge. To ensure compliance with its regulations, ICC investigates alleged violations and takes necessary enforcement action. The objectives of our review were to (1) follow up on recommendations made in our 1984 report on ICC's enforcement program;[1] (2) update ICC enforcement statistics included in our 1984 report; and (3) provide information on other actions ICC has taken to meet enforcement responsibilities in light of declining resources.

Our review, performed at ICC headquarters, was based primarily on discussions with ICC officials and data obtained from them. We also conducted telephone interviews with ICC regional officials to obtain their views on recent changes in the enforcement program. Our work and the data we collected generally covered ICC enforcement activities undertaken during fiscal years 1984 and 1985. Because of the limited scope of our work, we did not assess the effectiveness of ICC's enforcement program in achieving compliance or the adequacy of its resources in carrying out its enforcement responsibilities. In addition, we did not assess the reliability of statistical data generated by ICC's enforcement data system, including ICC data used in our report.

In general, ICC has been responsive to the recommendations contained in our 1984 report. It has established enforcement goals

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[1]The Interstate Commerce Commission Can Better Manage Its Enforcement Program (GAO/RCED-84-131, May 24, 1984).

and priorities, given investigators greater flexibility in pursuing violations, and restructured its enforcement data system. ICC enforcement data for 1985 indicate that ICC has given greater emphasis to high priority enforcement areas, taken on a more active enforcement posture, and generated additional data for measuring enforcement results. According to ICC regional officials, however, budget cuts in 1985, particularly a 50 percent reduction in travel funds, hampered field enforcement efforts that require extensive travel.

With recent regulatory reforms calling for less federal intervention in the transportation marketplace, ICC's enforcement policy has increasingly focused on encouraging compliance rather than penalizing violators. In 1985, for example, about 60 percent of ICC's enforcement cases were concluded with consent agreements under which violators agreed to cease their unlawful action.

ICC officials generally agreed with the findings and information presented in this report. These officials pointed out, however, that, while recent budget constraints have placed limits on ICC's enforcement activities, they believe ICC's enforcement effort has been effective within existing funding levels. We have incorporated comments of ICC officials within the report where appropriate.

If you should wish to discuss further the matters raised in this report, please contact me at 275-7783.

Sincerely yours,

Herbert R. McLure

Herbert R. McLure
Associate Director

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ABBREVIATIONS

GAO	General Accounting Office
ICC	Interstate Commerce Commission

HIGHLIGHTS OF OUR ENFORCEMENT WORK RESULTS

- LEGISLATION SINCE 1980 IN RAIL, TRUCKING, BUSING, AND HOUSEHOLD GOODS MOVING HAS SOUGHT TO STIMULATE COMPETITION AND ALLOW MORE MARKETPLACE ANSWERS TO SERVICE, PRICE, AND QUALITY QUESTIONS.

- WE REVIEWED ICC ENFORCEMENT IN 1984 AND FOUND NEED FOR ESTABLISHING PRIORITIES, INCREASING INVESTIGATIVE FLEXIBILITY, AND MAKING BETTER USE OF ITS DATA SYSTEM.

- ICC HAS TAKEN POSITIVE STEPS TOWARD IMPLEMENTING OUR 1984 RECOMMENDATIONS.

  --86 PERCENT OF CASES OPENED WERE IN HIGH PRIORITY VIOLATION AREAS, UP FROM 58 PERCENT IN 1984.

  --65 PERCENT OF 1985 CASES WERE DERIVED FROM SOURCES OTHER THAN COMPLAINTS, UP FROM 41 PERCENT IN 1984.

  --PROGRAM GOALS WERE ESTABLISHED, i.e., 30 PERCENT OF COMPLETED INVESTIGATIONS SHOULD BE PROSECUTABLE AND 70 PERCENT SHOULD BE HIGH PRIORITY.

  --DATA SYSTEM WAS IMPROVED BY MORE FREQUENT REPORTING OF MORE DETAILED INFORMATION.

- HOWEVER, CONGRESSIONALLY MANDATED BUDGET CUTS FURTHER REDUCED ICC'S STAFFING, FUNDING, AND TRAVEL.

  --INVESTIGATIVE/LITIGATIVE STAFF IN THE FIELD WAS REDUCED BY 57 PERCENT FROM 1980 TO 1986 (272 TO 118).

  --TRAVEL BUDGET WAS REDUCED BY 49 PERCENT FROM $905,000 IN 1984 TO $463,000 IN 1985.

- INITIATIVES ICC TOOK TO FOCUS RESOURCE USAGE INCLUDE: CONSENT AGREEMENTS, PROSECUTORIAL GUIDELINES, AND CASE FOLLOW-UP TARGETS.

  --CONSENT AGREEMENTS HAVE BECOME GENERALLY POPULAR IN ICC SINCE 1984 AND ARE VIEWED AS AN EFFICIENT AND TIMELY MEANS OF ACHIEVING COMPLIANCE.

  --27 PERCENT OF CLOSED CASES IN 1984 USED CONSENT AGREEMENTS.

  --61 PERCENT OF CLOSED CASES IN 1985 USED CONSENT AGREEMENTS.

- 80 PERCENT OF ASSESSED FINES HAVE BEEN OR WILL BE COLLECTED.

- ALTHOUGH MOST PENALTIES HAVE BEEN FOR LOW PRIORITY VIOLATIONS, ICC HAS SHIFTED TO PENALIZING A HIGHER PROPORTION OF HIGH PRIORITY VIOLATIONS.

- PROPORTION OF PENALTIES FOR HIGH PRIORITY VIOLATIONS ROSE FROM

  --27 PERCENT IN 1983 TO

  --49 PERCENT IN 1984 TO

  --60 PERCENT IN 1985.

BACKGROUND: ORIGIN OF ICC'S CURRENT REGULATORY ROLE

- MOTOR CARRIER ACT OF 1980

  --THE CONGRESS FOUND THAT THE REGULATORY STRUCTURE INHIBITED ENTRY AND GROWTH AND THAT PROTECTIVE REGULATION RESULTED IN INEFFICIENCIES AND ANTICOMPETITIVE PRICING.

  --THE ACT AMENDED NATIONAL TRANSPORTATION POLICY

  "TO PROMOTE COMPETITIVE AND EFFICIENT TRANSPORTATION SERVICES . . ."

  "TO . . . ALLOW A VARIETY OF QUALITY AND PRICE OPTIONS . . ."

- STAGGERS RAIL, HOUSEHOLD GOODS, AND BUS REGULATORY REFORM ACTS PASSED TO STIMULATE COMPETITION WITHIN THESE INDUSTRIES BY

  --LOWERING ENTRY BARRIERS AND STIMULATING GROWTH OF EXISTING FIRMS, AND

  --INCREASING CARRIERS' RATE SETTING AND CHARGING FLEXIBILITY.

- WHILE THESE REFORMS MADE IT EASIER FOR CARRIERS TO OBTAIN OPERATING AUTHORITY AND SET RATES, ICC STILL ENFORCES LAWS/REGULATIONS REQUIRING CARRIERS TO

  --OBTAIN OPERATING AUTHORITY AND MEET RELATED INSURANCE AND SAFETY REQUIREMENTS;

  --ADHERE TO PUBLISHED TARIFF RATES;

  --COMPLY WITH REGULATIONS ON HANDLING SHIPPER CLAIMS FOR OVERCHARGES, DUPLICATE PAYMENTS, LOSS AND DAMAGE, ETC.;

  --COMPLY WITH REGULATIONS PROTECTING HOUSEHOLD GOODS CONSUMERS AGAINST IMPROPER CHARGES, LATE DELIVERIES, LOSS AND DAMAGE ABUSES, ETC.;

  --COMPLY WITH REGULATIONS PROTECTING OWNER-OPERATORS AGAINST SUCH ABUSES AS UNTIMELY REIMBURSEMENTS, AND MISHANDLING OF ESCROW FUNDS, ETC.; AND

--REFRAIN FROM ENGAGING IN SUCH ANTI-COMPETITIVE PRACTICES AS PREDATORY AND DISCRIMINATORY PRICING, UNAUTHORIZED COLLECTIVE RATE SETTING, AND UNAPPROVED MERGERS.

OBJECTIVES

- FOLLOW UP ON OUR RECOMMENDATIONS MADE IN 1984:

  --ICC SHOULD IDENTIFY APPROPRIATE ENFORCEMENT PROGRAM GOALS AND ESTABLISH MEANINGFUL PRIORITIES TO ASSIST IN RESOURCE ALLOCATION.

  --ICC SHOULD PROVIDE FIELD STAFF WITH ENOUGH INVESTIGATIVE FLEXIBILITY TO ENSURE PRIORITIES ARE ADDRESSED.

  --ICC SHOULD IMPROVE THE MAINTENANCE AND USE OF DATA SO THAT PROGRAM CAN BE BETTER MONITORED AND EVALUATED.

- DEVELOP INFORMATION ON HOW ICC'S ENFORCEMENT RESOURCES HAVE CHANGED SINCE 1984.

- DOCUMENT ACTIONS ICC TOOK TO FOCUS ENFORCEMENT RESOURCES, IN ADDITION TO STEPS TAKEN IN RESPONSE TO OUR 1984 RECOMMENDATIONS.

  --EMPHASIS ON USE OF CONSENT AGREEMENTS.

  --NEW PROCEDURES FOR CASE FOLLOW-UP.

- PROVIDE INFORMATION ON PENALTY ASSESSMENT AND COLLECTION.

SCOPE AND METHODOLOGY

- WE FOCUSED OUR FOLLOW-UP WORK ON ICC'S ACTIONS TO IMPROVE ITS ENFORCEMENT SINCE MID-1984.

- TO UPDATE STATISTICS IN OUR 1984 REPORT, WE USED DATA SUPPLIED BY ICC FOR FY 1984 AND FY 1985. HOWEVER, WE DID NOT VERIFY THE DATA'S ACCURACY.

- USING A QUESTIONNAIRE WE SENT TO ICC REGIONAL OFFICES, WE COLLECTED PENALTY DATA FOR FY 1982-85.

- WE EXAMINED CONSENT AGREEMENT DATA COVERING FISCAL YEARS 1983, 1984, AND 1985.

- WE GATHERED DATA FROM AND INTERVIEWED ICC HEADQUARTERS OFFICIALS IN THE OFFICE OF COMPLIANCE AND CONSUMER ASSISTANCE.

- WE CONDUCTED TELEPHONE INTERVIEWS WITH THE SIX ICC REGIONAL OFFICES REGARDING

  --INVESTIGATOR FLEXIBILITY,

  --FOLLOW-UP ACTIONS, AND

  --CONSENT AGREEMENTS.

OVERVIEW OF ICC'S ACTIONS TAKEN IN RESPONSE TO OUR 1984 RECOMMENDATIONS

- ENFORCEMENT PRIORITIES WERE IMPLEMENTED.

  --ICC REPORTED 86 PERCENT OF NEW CASES WERE IN HIGH PRIORITY AREAS IN 1985.

- STAFF WAS GIVEN FLEXIBILITY TO SEEK OUT VIOLATIONS RATHER THAN RELYING EXCLUSIVELY ON COMPLAINTS TO DETERMINE THE ENFORCEMENT WORK LOAD.

- ACCORDING TO REGIONAL OFFICIALS, HOWEVER:

  --SELF-INITIATED EFFORTS WERE HINDERED IN 1985 BY SHARP CUTS IN STAFF AND TRAVEL FUNDS.

  --THE ANTITRUST AND KICKBACKS VIOLATION AREAS, WHICH ARE RESOURCE INTENSIVE AND RELY HEAVILY ON SELF-INITIATED EFFORTS, CONTINUED TO RECEIVE LIMITED ATTENTION IN 1985.

- HEADQUARTERS OFFICIALS REALIZE THAT ENFORCEMENT ACTIVITIES COULD BE ENHANCED WITH ADDED RESOURCES BUT BELIEVE ENFORCEMENT HAS BEEN EFFECTIVE WITHIN EXISTING BUDGET LIMITS.

- ICC IMPROVED ITS ENFORCEMENT ACTIVITY DATA SYSTEM TO PERMIT BETTER MONITORING AND EVALUATION OF ENFORCEMENT EFFORTS.

ENFORCEMENT PRIORITIES WERE IMPLEMENTED

- IN JULY 1984, ICC ADOPTED ENFORCEMENT PRIORITIES BY GROUPING 20 VIOLATION AREAS INTO TWO CATEGORIES: 11 "HIGH EMPHASIS" AND 9 "LOW EMPHASIS" AREAS.[a]

HIGH-EMPHASIS	LOW-EMPHASIS
ANTITRUST	RATE INTEGRITY
ETHICS	SERVICE
SAFETY FITNESS	MERGERS
HOUSEHOLD GOODS	OPERATIONAL FITNESS
LUMPING	MISUSE OF ASSETS
INSURANCE	ICC DECISIONS
KICKBACKS	RECORDS
OVERCHARGES, ETC.	DIRECTED SERVICES
OWNER-OPERATOR	AUTHORITY (FREIGHT)
AUTHORITY (PASSENGER)	
WEIGHT-BUMPING	

[a]Brief definitions of these violation areas are on succeeding pages.

HIGH EMPHASIS VIOLATION AREAS:
BRIEF DESCRIPTIONS

- ANTITRUST - CARRIER ACTIVITIES RESULTING IN PROHIBITED RESTRAINT OF TRADE, SUCH AS UNAUTHORIZED COLLECTIVE RATE-MAKING, DISCRIMINATION IN SERVICE OR RATES, ETC.

- ETHICS - CARRIER DEVIATIONS FROM ICC CONDUCT CODE UNDERMINING ICC DECISIONMAKING, SUCH AS FALSE STATEMENTS.

- SAFETY FITNESS - CARRIER NOT MEETING DEPARTMENT OF TRANSPORTATION SAFETY STANDARDS.

- HOUSEHOLD GOODS - MOVER ABUSES AGAINST CONSUMERS, SUCH AS IMPROPER CHARGES AND LATE DELIVERIES.

- LUMPING - FORCING AN INDEPENDENT TRUCKER WHO LEASES TRUCKING SERVICES TO A CARRIER TO USE LOADING/UNLOADING SERVICES OF SHIPPERS OR OTHERS.

- INSURANCE - CARRIER OPERATING WITHOUT REQUIRED PERSONAL/PROPERTY LIABILITY INSURANCE.

- KICKBACKS - CARRIER MAKING SECRET PAYMENTS TO SHIPPER EMPLOYEES IN RETURN FOR USING CARRIER'S SERVICES.

- OVERCHARGES, ETC. - CARRIER NOT REIMBURSING SHIPPER FOR EXCESSIVE/DUPLICATIVE CHARGES, C.O.D. PAYMENTS, LOSS/DAMAGE CLAIMS, ETC.

- OWNER-OPERATOR - CARRIER NOT ADHERING TO TERMS OF LEASING AGREEMENTS WITH INDEPENDENT TRUCKERS, COVERING REIMBURSEMENT, ESCROW FUNDS, INSURANCE COVERAGE, ETC.

- AUTHORITY (PASSENGER SERVICE) - PASSENGER CARRIER OPERATING WITHOUT ICC AUTHORITY.

- WEIGHT-BUMPING - CARRIER OVERCHARGING CONSUMERS BY FALSELY INFLATING WEIGHT OF GOODS MOVED.

LOW EMPHASIS VIOLATION AREAS: BRIEF DESCRIPTIONS

- RATE INTEGRITY - CARRIER PROVIDING RATE DISCOUNTS TO CERTAIN SHIPPERS, PARTICULARLY WHERE DISCRIMINATORY.

- SERVICE - CARRIER NOT MEETING SERVICE NEEDS OF THE PUBLIC, PARTICULARLY UNAPPROVED RAIL ABANDONMENTS.

- MERGERS, ETC. - UNAPPROVED CARRIER ACTION TO GAIN ANTI-COMPETITIVE CONTROL OF ANOTHER CARRIER.

- OPERATIONAL FITNESS - CARRIER NOT FIT, WILLING AND ABLE (OTHER THAN SAFETY AND INSURANCE) TO COMPLY WITH ICC RULES/REGULATIONS.

- MISUSE OF ASSETS - IMPROPER USE OF CARRIER ASSETS, GENERALLY BY CERTAIN OWNERS, WHICH RESULTS IN JEOPARDIZING INVESTOR INTERESTS.

- ICC DECISIONS, ETC. - CARRIER NOT COMPLYING WITH ICC ORDERS/DECISIONS.

- RECORDS, ETC. - CARRIER NOT MAINTAINING REQUIRED RECORDS.

- DIRECTED SERVICES - SHIPPERS AND OTHERS FAIL TO PAY FOR SERVICES BY A RAILROAD, WHERE ICC ORDERED THE RAILROAD TO TAKE OVER OPERATIONS OF A BANKRUPT RAILROAD AND AGREED TO PAY FOR LOSSES INCURRED.

- AUTHORITY (FREIGHT SERVICES) - FREIGHT CARRIER OPERATING WITHOUT ICC AUTHORITY.

REGIONAL STAFFS' VIEWS OF PRIORITIES AND WHERE GREATER SELF-INITIATED EFFORTS ARE MOST NEEDED

- PRIORITIES ARE USEFUL AND REGIONS VIEW THEM AS APPROPRIATELY REFLECTING ICC'S MISSION.

- HOWEVER, SUBSTANTIAL CUTS IN STAFF AND TRAVEL RESOURCES IMPEDED GREATER ENFORCEMENT EFFORTS IN CERTAIN HIGH-PRIORITY VIOLATIONS AREAS, INCLUDING:

  --ANTITRUST
  --KICKBACKS
  --OWNER-OPERATOR
  --HOUSEHOLD GOODS
  --SAFETY FITNESS

- GREATER ENFORCEMENT EFFORTS IN THESE AREAS WERE ALSO HAMPERED BY NEED TO INTENSIFY ENFORCEMENT OF CARRIER INSURANCE REQUIREMENTS. MANY CARRIERS ARE HAVING PROBLEMS MEETING HIGHER INSURANCE PREMIUMS.

- IN THE ANTITRUST AND KICKBACK VIOLATION AREAS, ENFORCEMENT EFFORTS WERE FURTHER HANDICAPPED BECAUSE

  --THE SELF-INITIATED EFFORTS GENERALLY REQUIRED TO IDENTIFY POTENTIAL VIOLATIONS ARE COMPLEX AND TIME-CONSUMING; SUFFICIENT STAFF IS NOT AVAILABLE TO UNDERTAKE THIS TYPE OF EFFORT.

  --STAFF EXPERIENCED IN THE ANTITRUST AND KICKBACK AREAS ARE LEAVING ICC BECAUSE THEY FEEL ICC'S FUTURE IS UNCERTAIN.

- GREATER SELF-INITIATED ENFORCEMENT EFFORTS ARE NEEDED IN THESE AREAS TO GUARD AGAINST ANTICIPATED ABUSES.

  --INCREASED COMPETITION DUE TO EASY ENTRY (SAFETY FITNESS, ANTITRUST, AND KICKBACKS);

  --DECREASED ANTITRUST IMMUNITY ON COLLECTIVE RATE SETTING (ANTITRUST);

  --THE ECONOMIC DECLINE IN THE TRUCKING INDUSTRY (OWNER-OPERATOR, HOUSEHOLD GOODS).

RESULTS OF GUIDANCE ON PRIORITIES

* UNDER ICC'S PRIORITY SYSTEM, ABOUT 86 PERCENT OF INVESTIGATIONS IN 1985 COVERED VIOLATION AREAS DESIGNATED "HIGH EMPHASIS."

INVESTIGATIONS OPENED BY VIOLATION AREA, FISCAL YEARS 1984 AND 1985

Violation area	1984[a] Number	1984[a] Percent	1985 Number	1985 Percent
High Emphasis				
Antitrust	5	3	14	4
Ethics	12	6	17	5
Safety fitness	5	3	26	8
Household goods	6	3	16	5
Lumping	3	2	2	1
Insurance	b	b	b	b
Kickbacks	8	4	13	4
Overcharges, etc.	30	16	49	15
Owner-operator	31	16	87	26
Authority (passenger)	8	4	61	18
Weight-bumping	1	1	2	1
Subtotal[c] - High emphasis	109	58	287	86
Low emphasis				
Rate integrity	25	13	16	5
Service	2	1	-	-
Mergers	1	1	1	-
Operational fitness	4	2	3	1
Misuse assets	-	-	-	-
ICC decisions	3	2	-	-
Records	1	1	1	-
Directed services	-	-	1	-
Authority (freight)	44	23	23	7
Subtotal[c] - Low emphasis	80	42	45	14
Total	189	100	332	100

[a]ICC data available for the last three quarters of fiscal year 1984 only.

[b]This chart excludes insurance enforcement activity. Because of an insurance crisis in the trucking industry, ICC has followed up on the insurance status of over 900 motor carriers in fiscal year 1985. If insurance cases are included, about 96 percent of ICC investigations were in the high-emphasis area in 1985.

[c]Totals may not add due to rounding.

IN FISCAL YEAR 1985, FEWER ICC INVESTIGATIONS WERE DERIVED FROM COMPLAINTS UNDER MODIFIED ENPORCEMENT POLICY

ORIGIN OF INVESTIGATIONS
IN FISCAL YEARS 1983 AND 1985

Origin	Boston Region 1 '83	Boston Region 1 '85	Philadelphia Region 2 '83	Philadelphia Region 2 '85	San Francisco Region 6 '83	San Francisco Region 6 '85	All regions '83[a]	All regions '85
	(percent)							
Complaints	46	36	44	31	82	60	-	35
All sources other than complaints	54	64	56	69	18	40	-	65
Total	100	100	100	100	100	100		100

[a]1983 data for all regions not available.

- ACCORDING TO REGIONAL OFFICIALS,

  --FLEXIBILITY TO SELF-INITIATE INVESTIGATIONS IS ESSENTIAL TO AN EFFECTIVE ENFORCEMENT PROGRAM.

  --ALTHOUGH VARIED IN INTENSITY, SELF-INITIATED ENFORCEMENT EFFORTS UNDERTAKEN DURING 1985 INCLUDED:

    ANTITRUST
    KICKBACKS
    UNAUTHORIZED PASSENGER TRANSPORTATION
    OVERCHARGES, ETC.
    HOUSEHOLD GOODS

  --LIMITED RESOURCES AND RELATED FACTORS HAVE HANDICAPPED THE EXTENT TO WHICH SELF-INITIATED ENFORCEMENT EFFORTS COULD BE UNDERTAKEN IN THESE AND OTHER VIOLATION AREAS.

AS IN 1983, COMPLAINT-GENERATED INVESTIGATIONS IN FISCAL YEAR 1985 WERE CONCENTRATED IN A LIMITED NUMBER OF VIOLATION AREAS[a]

DISTRIBUTION OF COMPLAINT-GENERATED INVESTIGATIONS[a] IN FISCAL YEAR 1985

Violation area[b]	Boston Region 1		Philadelphia Region 2		San Francisco Region 6		All regions	
	'83	'85	'83	'85	'83	'85	'83[c]	'85
	(percent)							
Unauthorized transportation[d]	28	61	58	11	25	11	-	23
Owner-operator	26	22	15	42	38	44	-	39
Overcharges, etc.	e	6	e	16	e	11	-	17
Household goods	11	e	8	e	4	17	-	6
Kickbacks	e	6	e	11	e	11	-	e
Rate integrity	18	e	6	e	12	e	-	e
Operational fitness	e	6	e	e	e	e	-	e
Subtotal[f]	82	100	87	79	78	94	-	84
All others	18	-	13	21	22	6	-	16
Total	100	100	100	100	100	100	-	100

[a]Based on top four violation areas investigated in 1983 and 1985.

[b]Insurance investigations are excluded to eliminate distortion of data caused by high violation rate due to sharp, recent increases in premiums and coverage.

[c]Data on all regions was not collected in 1983.

[d]Includes passenger and freight transportation.

[e]This violation area was not among the top four areas in the given year.

[f]Totals may not add due to rounding.

ICC IMPROVED ITS ENFORCEMENT DATA SYSTEM

- IN OCTOBER 1984, ICC MODIFIED ITS ENFORCEMENT DATA SYSTEM TO PROVIDE, AMONG OTHER THINGS, A DESCRIPTIVE PROFILE AND STATUS OF EACH INVESTIGATION, INCLUDING INFORMATION ON

  --THE ORIGIN OF THE INVESTIGATION;

  --THE VIOLATION CATEGORY ADDRESSED;

  --ESTIMATED AND ACTUAL COMPLETION DATES;

  --STAFF RESOURCES USED;

  --THE PROGRESS/STATUS OF THE INVESTIGATION; AND

  --THE TYPE OF ENFORCEMENT ACTION TAKEN.

- UNDER THE SYSTEM, REGIONS SUBMIT QUARTERLY REPORTS INDICATING INVESTIGATIVE EFFORTS AND RESULTS AS FOLLOWS:

  --THE NUMBER OF INVESTIGATIONS OPENED/CLOSED BY VIOLATION CATEGORY, ORIGINATION OF INVESTIGATION, AND STAFF RESOURCES EXPENDED.

  --THE NUMBER OF INVESTIGATIONS CLOSED BY VIOLATION CATEGORY AND TYPE OF ENFORCEMENT ACTION IMPOSED.

- ACCORDING TO REGIONAL OFFICIALS,

  --THE IMPROVED DATA SYSTEM PROVIDES A MORE USEFUL BASIS FOR MONITORING AND ASSESSING ENFORCEMENT ACTIVITIES.

  --ANALYSIS OF DATA DERIVED FROM THE SYSTEM ENABLES REGIONS TO TAKE NECESSARY ACTIONS, MAKE CHANGES, REDIRECT EFFORTS, AND INTRODUCE IMPROVEMENTS IN ENFORCEMENT ACTIVITIES.

  --SYSTEM DATA ARE PERIODICALLY REVIEWED FOR CONSISTENCY WITH SOURCE DATA.

- WE DID NOT, HOWEVER, ASSESS THE RELIABILITY OF THE SYSTEM'S DATA.

ICC'S STEPS TOWARD EVALUATION: STANDARDS, FOLLOW-UP, AND REPORTING

- ICC REGIONS ARE RESPONSIBLE FOR EVALUATION OF ENFORCEMENT ACTIVITIES TO MEASURE AND IMPROVE PERFORMANCE.

- ICC HAS ADOPTED SPECIFIC STANDARDS TO ASSESS CERTAIN INVESTIGATIVE AND LITIGATIVE ACTIVITIES, INCLUDING

  --TIMELINESS,

  --PRIORITY AREAS ADDRESSED, AND

  --OUTCOME OF CASES.

- ICC STANDARDS ESTABLISHED IN JULY 1985 PROVIDE, FOR EXAMPLE, THAT

  --AT LEAST 80 PERCENT OF INVESTIGATIONS PENDING AT THE BEGINNING OF THE QUARTER SHOULD BE COMPLETED DURING THE QUARTER;

  --AT LEAST 70 PERCENT OF ALL ENFORCEMENT CASES SHOULD BE IN HIGH EMPHASIS AREAS;

  --AT LEAST 80 PERCENT OF COMPLETED INVESTIGATIONS SHOULD BE PROSECUTABLE.

- TO ASSESS EFFECTIVENESS OF ENFORCEMENT ACTIONS IMPOSED ON VIOLATORS, ICC REQUIRES REGIONS TO FOLLOW UP TO DETERMINE IF COMPLIANCE HAS BEEN ACHIEVED.

DECLINING ENFORCEMENT STAFFING, FUNDING, AND TRAVEL

- UNDER ICC'S ENFORCEMENT PROGRAM, REGIONAL INVESTIGATORS AND ATTORNEYS INVESTIGATE AND RESOLVE ALLEGED VIOLATIONS.

- ICC'S REGIONAL INVESTIGATIVE AND LITIGATIVE STAFF, WHICH HAS BEEN DECLINING SINCE 1980, CONTINUED TO DROP IN 1985, AND IS PROJECTED TO DROP FURTHER IN 1986, AS SHOWN BELOW:

Date	Transportation industry analyst	Investigators	Attorneys	Total	Cumulative percentage declire
10/1/80	168	69	35	272	-
10/1/81	157	62	33	252	7
10/1/82	154	59	32	245	10
10/1/83	126	40	25	191	30
10/1/84	a	141	23	164	40
10/1/85	a	115	21	136	50
10/1/86	a	99	19	118	57

- AN ICC BUDGET CUT IN 1985 REQUIRED NOT ONLY REDUCTIONS IN ENFORCEMENT STAFFING BUT ALSO A ONE DAY PER WEEK FURLOUGH OF EMPLOYEES BETWEEN APRIL AND JUNE 1985.

- THE BUDGET CUT ALSO REQUIRED A REDUCTION IN ENFORCEMENT TRAVEL FUNDS FROM $905,000 IN 1984 TO $463,000 IN 1985. ACCORDING TO ICC REGIONAL OFFICIALS, THE 1985 BUDGET CUTS HAD A PARTICULARLY ADVERSE IMPACT ON ICC'S ENFORCEMENT ACTIVITIES IN 1985.

- HEADQUARTERS OFFICIALS BELIEVE, HOWEVER, THAT ENFORCEMENT HAS BEEN EFFECTIVE WITHIN EXISTING BUDGET LIMITS.

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[a]The transportation industry analyst positions were converted to investigator positions.

OVERVIEW OF ACTIONS ICC HAS TAKEN TO CONSERVE AND FOCUS ENFORCEMENT RESOURCES

- IN ADDITION TO IMPLEMENTING THE RECOMMENDATIONS MADE IN OUR 1984 REPORT, SUCH AS ESTABLISHING ENFORCEMENT PRIORITIES, ICC HAS

  --DEVELOPED THE "CONSENT AGREEMENT" AS AN ENFORCEMENT TOOL. A CONSENT AGREEMENT IS STRONGER THAN A WARNING LETTER BUT LESS TIME-CONSUMING THAN THE NEXT STEP IN THE ENFORCEMENT PROCESS--OBTAINING A COURT ORDER (INJUNCTION).

  --ISSUED "PROSECUTORIAL PROCEDURAL GUIDELINES" ON AUGUST 29, 1983, AS A STAFF GUIDE TO THE LEVEL OF EFFORT REQUIRED AND THE APPROPRIATE ENFORCEMENT ACTION FOR EACH CATEGORY OF VIOLATION.

  --DEVELOPED FOLLOW-UP GUIDELINES FOR EVALUATING ENFORCEMENT EFFECTIVENESS.

CONSENT AGREEMENTS: ORIGINS AND USE

- REGULATORY REFORMS PROMPTED ICC TO EMPHASIZE NEW ENFORCEMENT APPROACHES FOCUSING ON ACHIEVING COMPLIANCE RATHER THAN PUNISHMENT.

  --IN AUGUST 1983 ICC ISSUED GUIDELINES STATING THAT CIVIL OR CRIMINAL PENALTIES SHOULD BE USED ONLY WHEN IT IS DETERMINED THAT ADMINISTRATIVE OR INJUNCTIVE ACTION WILL NOT ACHIEVE COMPLIANCE.

  --THESE GUIDELINES PROVIDED FOR THE USE OF CONSENT AGREEMENTS AS AN ENFORCEMENT TOOL.

- CONSENT AGREEMENTS ARE USED FREQUENTLY BECAUSE OF

  --A LARGE, RAPID INCREASE IN THE NUMBER OF INSURANCE CASES HANDLED BY ICC BETWEEN FY 1983 AND FY 1985 WHICH REQUIRED AN EASY-TO-USE ENFORCEMENT TOOL;

  --DECLINING ICC BUDGETS AND STAFF LEVELS WHICH ENCOURAGED USING ENFORCEMENT TOOLS THAT WERE LESS TIME-CONSUMING AND LESS EXPENSIVE THAN PURSUING CIVIL AND CRIMINAL PENALTIES; AND

  --THE AUGUST 1983 GUIDELINES FOR PROMOTING VOLUNTARY COMPLIANCE.

- THE CONSENT AGREEMENT PROCESS:

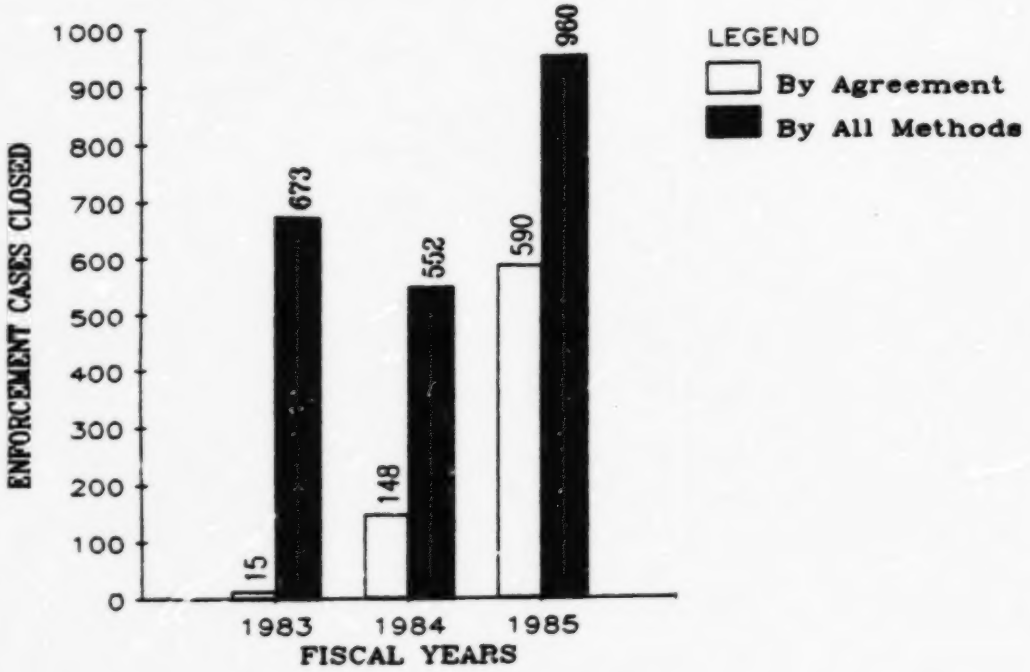
  --WRITTEN AGREEMENT BETWEEN ICC AND VIOLATOR.

  --BY SIGNING, THE VIOLATOR ADMITS TO WRONGDOING, AGREES TO STOP THE VIOLATION, AND PERMITS USE OF CONSENT AGREEMENT AS EVIDENCE AGAINST THE VIOLATOR IN FUTURE PROCEEDINGS.

  --IN RETURN, THE ICC AGREES NOT TO REFER THE CASE TO THE DEPARTMENT OF JUSTICE TO SEEK CIVIL OR CRIMINAL PENALTIES.

  --IF CONSENT AGREEMENT NOT HONORED, ICC SEEKS AN INJUNCTION.

ICC'S USE OF CONSENT AGREEMENTS TO CLOSE CASES



- FROM FY 1983 TO FY 1985 THERE WAS AN INCREASE IN ICC'S USE OF CONSENT AGREEMENTS TO CLOSE CASES.

- IN FIVE OF SIX ICC REGIONS, AT LEAST 50 PERCENT OF CASES WERE CLOSED WITH CONSENT AGREEMENTS IN FY 1985. REGIONAL USE OF CONSENT AGREEMENTS RANGED FROM 45 PERCENT TO 74 PERCENT OF TOTAL CASES CLOSED.

- REGIONAL OFFICIALS' VIEWS OF CONSENT AGREEMENTS

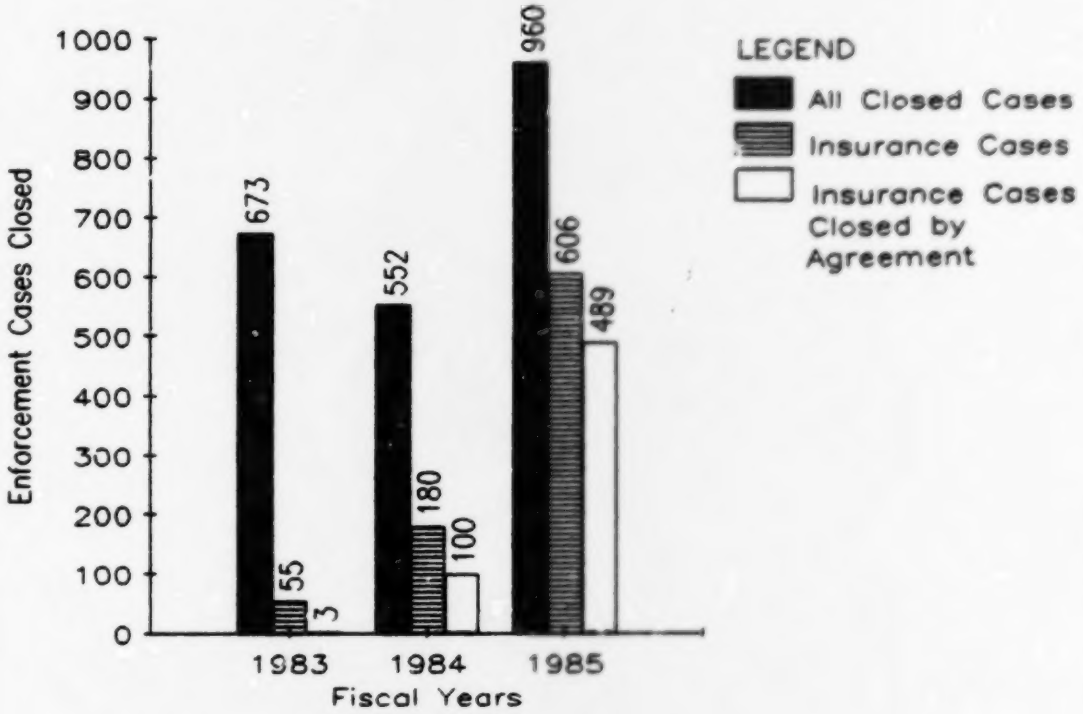
  --FIVE OF SIX ICC REGIONS BELIEVED CONSENT AGREEMENTS WERE EFFECTIVE BECAUSE THEY

    USE FEWER RESOURCES THAN CIVIL OR CRIMINAL ACTIONS,

    ARE AN EXPEDITIOUS WAY OF DEALING WITH RECENT INCREASES IN INSURANCE CASES, AND

    GENERALLY HAVE BEEN SUCCESSFUL. MOST CONSENT AGREEMENTS HAVE BEEN HONORED BY THE VIOLATORS WHO SIGNED THEM.

CONSENT AGREEMENTS USED TO CLOSE INSURANCE CASES



- BETWEEN FY 1983 AND FY 1985, AN INCREASING PORTION OF ICC'S CLOSED ENFORCEMENT CASES WERE INSURANCE VIOLATIONS.

- COMBINING FY 1984 AND FY 1985, 75 PERCENT OF ICC'S INSURANCE CASES WERE CLOSED WITH CONSENT AGREEMENTS.

- DURING FY 1985, REGIONAL USE OF CONSENT AGREEMENTS FOR INSURANCE CASES RANGED FROM 55 PERCENT TO 93 PERCENT OF TOTAL CLOSED INSURANCE CASES.

HOW DO ICC'S PROSECUTORIAL GUIDELINES WORK?

- FOR EACH VIOLATION TYPE (ANTITRUST, ETHICS, FITNESS/SAFETY, ETC.), A SERIES OF PROCEDURES IS SUGGESTED IN THE GUIDELINES ON WHEN TO PURSUE SOME OR ALL OF THE FOLLOWING:

  --WARNING LETTER TO CARRIER

  --INVESTIGATION

  --CONSENT AGREEMENT

  --INJUNCTIVE RELIEF

  --COMPLIANCE REVIEW

  --CONTEMPT PROCEEDINGS

  --CIVIL FORFEITURE

  --CRIMINAL PROCEEDINGS

- AFTER COMPLETING AN INVESTIGATION, THE FIELD STAFF IS REQUIRED TO NOTIFY HEADQUARTERS OF THE ENFORCEMENT ACTION PROPOSED. IF HEADQUARTERS DOES NOT OBJECT WITHIN 5 DAYS, THE FIELD STAFF MAY PROCEED WITH THE ACTION.

- IF VIOLATION BEING INVESTIGATED IS SUBSTANTIALLY DIFFERENT FROM DESCRIPTION IN GUIDELINES, THEN FIELD STAFF MUST WAIT UP TO 15 BUSINESS DAYS FOR HEADQUARTERS RESPONSE BEFORE TAKING THE PROPOSED ACTION.

ICC HAS ENHANCED ITS FOLLOW-UP PROCEDURES FOR EVALUATING ENFORCEMENT ACTIONS

- TRADITIONALLY, TO EVALUATE COMPLIANCE WITH TRANSPORTATION LAWS, THE ICC HAS RELIED ON

  --COMPLAINT EXPERIENCE;

  --THE LEVEL OF COMPLIANCE DISCOVERED DURING ROAD CHECKS--INSPECTIONS OF TRUCKS ON THE ROAD FOR COMPLIANCE WITH REGULATIONS;

  --COMPLIANCE SURVEYS OF CARRIER FIRMS; AND

  --MONITORING THE DETERRENT EFFECT OF ENFORCEMENT ACTIONS BROUGHT AGAINST INDIVIDUAL CARRIERS.

- HOWEVER, A NEW EVALUATION PROCEDURE BEGAN IN MAY 1985:

  --PROCEDURE PROVIDES FOR FOLLOW-UP CHECKS BY ICC REGIONS ON CONCLUDED CASES TO DETERMINE WHETHER COMPLIANCE WAS ACHIEVED AND IS LASTING.

  --THE NEW PROCEDURE SHOULD HELP ICC DETERMINE THE EFFECTIVENESS OF ITS ENFORCEMENT REMEDIES.

  --REGIONAL OFFICES HAVE JUST BEGUN REPORTING QUARTERLY ON ADHERENCE TO FOLLOW-UP TARGETS; THEREFORE, IT IS TOO EARLY TO EVALUATE EFFECTIVENESS OF THE FOLLOW-UP PROCEDURES.

- PERCENTAGE TARGETS FOR FOLLOWING UP ENFORCEMENT TOOLS WITHIN 3 MONTHS OF THEIR USE:

  --WARNING LETTERS: AT LEAST 50 PERCENT OF THEM SHOULD BE FOLLOWED UP.

  --VIOLATION NOTICES: 50 PERCENT FOLLOW-UP.

  --INJUNCTIONS: 90 PERCENT FOLLOW-UP.

  --CONSENT AGREEMENTS: 50 PERCENT FOLLOW-UP.

- THE NEW PROCEDURES ALSO SPECIFY DEADLINES FOR FOLLOWING UP THE VARIOUS VIOLATIONS. THESE DEADLINES VARY BY THE TYPE OF VIOLATION.

- REGIONAL OFFICIALS' VIEWS OF ICC'S NEW FOLLOW-UP TARGETS

  --FOUR REGIONS INDICATED THAT DECLINING ICC RESOURCES HAMPERED THEIR ABILITY TO ADHERE TO THE FOLLOW-UP TARGETS AND MAINTAIN AN ADEQUATE LEVEL OF ENFORCEMENT. THE OTHER TWO REGIONS DID NOT INDICATE THAT THEY WERE HAVING PROBLEMS ADHERING TO THE FOLLOW-UP TARGETS.

  --ONE REGION BELIEVES THE TARGETS ARE TOO HIGH AND ARE NOT COST EFFECTIVE BECAUSE THEY DETRACT FROM BEGINNING NEW INVESTIGATION WORK.

- HEADQUARTERS OFFICIALS INDICATED THAT

  --SPECIFIED FOLLOW-UP LEVELS ARE TARGETS TO BE AIMED FOR RATHER THAN INFLEXIBLE REQUIREMENTS.

  --LATEST DATA INDICATE REGIONS GENERALLY HAVE BEEN ABLE TO ADHERE TO THE SPECIFIED TARGET LEVELS DESPITE BUDGET CONSTRAINTS.

OVERVIEW OF CIVIL AND CRIMINAL PENALTY ACTIONS[a]

- MANY FACTORS INFLUENCE SETTLEMENT.
- REPEAT OFFENDERS COMPRISE 26 PERCENT OF PENALTY ACTIONS.
- OVER 80 PERCENT OF THE ASSESSED FINES HAVE BEEN OR WILL BE COLLECTED.
- BETWEEN FISCAL YEARS 1982-1985, AMOUNT DEMANDED WAS 2 1/2 TIMES THE AMOUNT SETTLED FOR AND COLLECTED.
- BETWEEN FISCAL YEARS 1982-1985, 81 PERCENT OF PENALTIES LEVIED WERE IN TWO LOW EMPHASIS VIOLATION AREAS.
- HOWEVER, DURING FISCAL YEARS 1984-1985, THE PROPORTION OF CIVIL PENALTIES SOUGHT FOR HIGH EMPHASIS AREAS HAS INCREASED.
- DURING THE LAST THREE FISCAL YEARS AT LEAST HALF OF CRIMINAL PENALTIES SOUGHT HAVE BEEN IN HIGH EMPHASIS AREAS.

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[a]This data was taken from GAO questionnaires which were sent to the ICC regions asking for information on all civil and criminal penalty cases ICC opened and closed between fiscal years 1982 and 1985. We received information on 199 cases.

MANY FACTORS INFLUENCED ICC REGIONAL COUNSELS' DECISIONS TO SETTLE AT A CERTAIN TIME OR FOR A SPECIFIC DOLLAR AMOUNT

- FOR THE 199 REPORTED CIVIL AND CRIMINAL PENALTY CASES BEGUN AND CONCLUDED BY ICC BETWEEN FISCAL YEARS 1982 AND 1985, THE FOLLOWING PRIMARY REASONS WERE GIVEN FOR AGREEING TO CLOSE THE CASE AT A CERTAIN TIME OR FOR A SPECIFIC DOLLAR AMOUNT.

  --VIOLATOR'S ABILITY TO PAY.

  --VIOLATOR'S ATTITUDE, KNOWLEDGE OF ILLEGALITY, AND ATTEMPTS TO HIDE VIOLATION.

  --SETTLEMENT AFTER COURT REFERRAL.

  --EXTENT OF VIOLATOR'S PROFITS OR BUSINESS BASED ON THE ILLEGAL ACTIVITY.

  --VIOLATOR'S PAST RECORD.

  --VIOLATION TYPE.

  --VIOLATOR'S WILLINGNESS TO TAKE CORRECTIVE ACTION.

MOST VIOLATORS PENALIZED BY ICC BETWEEN FISCAL YEARS 1982-1985 WERE NOT REPEAT OFFENDERS

- THE GAO QUESTIONNAIRE SENT TO THE ICC REGIONS ASKED FOR INFORMATION ON REPEAT OFFENDERS. OF THE 199 REPORTED CASES, THERE WERE

  --142 CASES OF NON-REPEAT OFFENDERS;

  --52 CASES OF REPEAT OFFENDERS; AND

  --5 CASES WHERE DATA WAS UNAVAILABLE.

- REPEAT OFFENDERS COMPRISE 26 PERCENT OF THE 199 PENALTY ACTIONS.

PENALTIES ASSESSED AND COLLECTED BY ICC[a]

- ICC HAS COLLECTED OR EXPECTS TO COLLECT MOST OF THE MONEY ASSESSED IN FINES DURING THE LAST TWO FISCAL YEARS.

- FY 1984 ASSESSMENT:

  --TOTAL AMOUNT VIOLATORS FINED: $1,406,858.

  --AMOUNT ICC COLLECTED: $880,284.[b]
  (AS OF 6/30/86)

  --OF THE $527,000 NOT COLLECTED:

  A SINGLE $500,000 FINE WAS OVERTURNED BY COURT OF APPEALS; AND

  A $27,000 FINE WAS NOT COLLECTED BECAUSE VIOLATOR CANNOT BE LOCATED.

- FY 1985 ASSESSMENT:

  --TOTAL AMOUNT VIOLATORS FINED: $1,404,142.32.

  --AMOUNT ICC COLLECTED: $1,407,642.32
  (INCLUDES A MISTAKEN PAYMENT OF $7,000 FOR A $3,500 FINE).

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[a]Data from ICC Headquarters.

[b]Includes $426 in excess of fines assessed.

COMPARISON OF AMOUNTS DEMANDED, SETTLED, AND NEGOTIATED FOR ICC CIVIL AND CRIMINAL PENALTIES FISCAL YEARS 1982-85

Action	Amount[a]	
	Median	Range
Initial demand	$12,500	$1,500-$1,510,740
Settlement	$ 5,000	$500-$234,909
Collection	$ 5,000	$500-$234,909

[a]To make the amounts in each of the three action steps more comparable, they were based on 109 penalty cases which were subject to all three actions--demand, settlement and collection. In other cases, one or more of these actions was not applicable.

ICC CIVIL AND CRIMINAL PENALTIES BY VIOLATION CATEGORY FISCAL YEARS 1982-85[a]

- FROM FY 1982 TO FY 1985[b], 81 PERCENT OF ICC'S CIVIL AND CRIMINAL PENALTY VIOLATIONS INVOLVED TWO TYPES OF LOW EMPHASIS VIOLATIONS.

High Emphasis Violations Penalized		Low Emphasis Violations Penalized	
Antitrust	0	Concessions/rebates	67
Ethics	2	Service	0
Fitness/safety	0	Unapproved mergers/ acquisitions	0
Household goods	2	Fitness (Other than safety)	0
Illegal lumping	5	Misappropriation of carrier assets	1
Insurance	2	ICC orders/decisions	0
Kickbacks	4	Record maintenance/ tariff departure	0
Overcharges/duplicate payments/ C.O.D.	4	Directed services	0
Owner-operator problems	8	Unauthorized non-passenger transportation	91
Unauthorized passenger carrier operations	10		
Weight bumping	0		
Total	37[c]	Total	159[c]

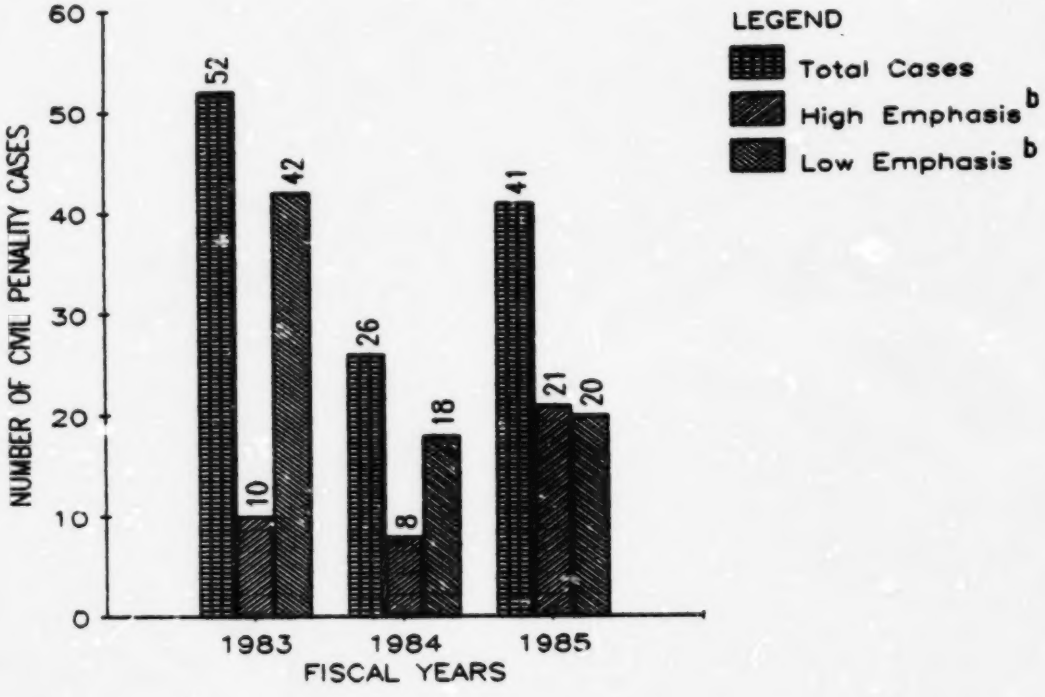
[a]Data from ICC Regional responses to GAO survey.

[b]High and Low Emphasis violation categories were not used by ICC until August 1984.

[c]Total number of violations (37 + 159) does not equal total number of cases (199) because some cases involved violations not listed above and some involved more than one violation so that 199 cases yield a net of 196 violations in 1985 categories.

SUMMARY OF ICC CIVIL PENALTY CASES[a]

- THE PROPORTION OF CIVIL PENALTY CASES IN HIGH EMPHASIS VIOLATION AREAS HAD INCREASED BETWEEN FISCAL YEARS 1983 AND 1985.

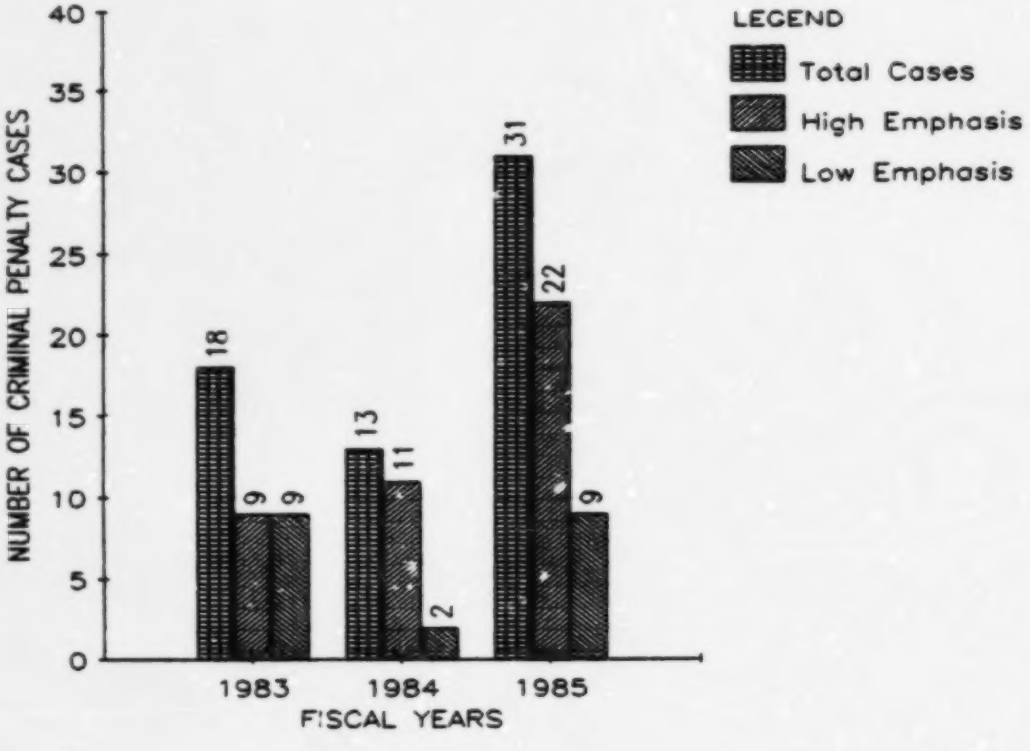


[a]A key distinction between a criminal and civil violation is that the former exposes the accused to a possible jail sentence in addition to a fine. Data from ICC Headquarters summaries of regional quarterly reports.

[b]Low emphasis cases in fiscal years 1983 and 1984 include both unauthorized property transportation (low emphasis) and unauthorized passenger transportation (high emphasis) because ICC data for 1983 and 1984 did not differentiate between property and passenger authority violations. However, other data show that most of the unauthorized transportation in 1983 and 1984 involved property (low emphasis).

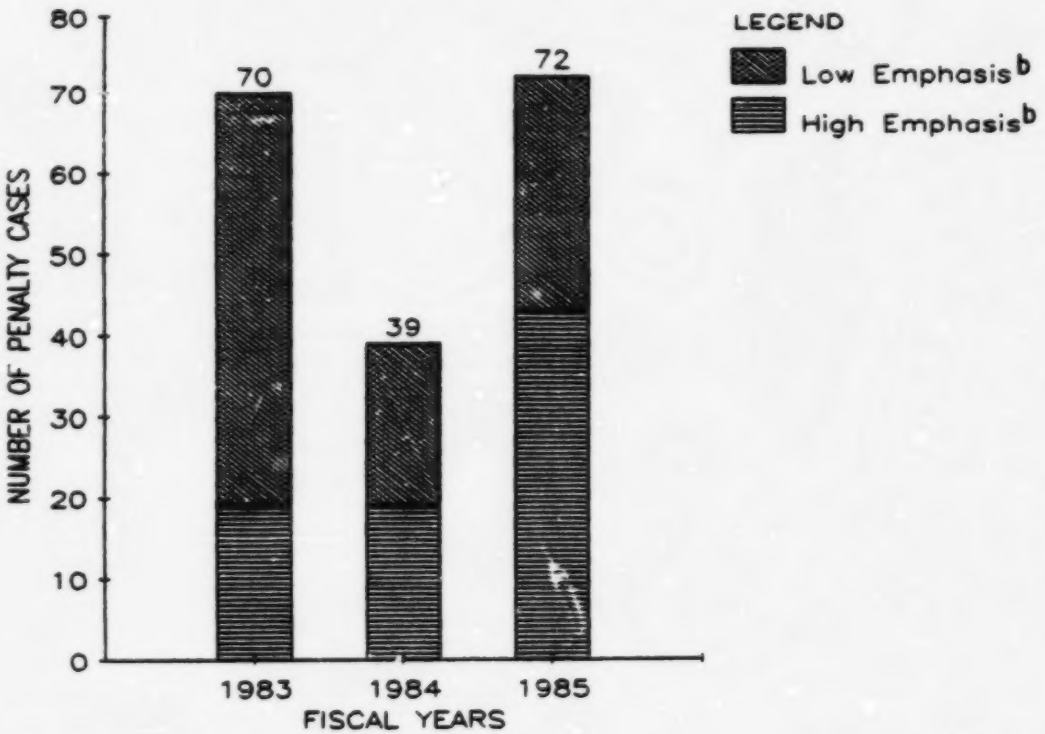
ICC CRIMINAL PENALTY CASES[a]

- DURING THE PAST THREE FISCAL YEARS, AT LEAST HALF OF THE CRIMINAL PENALTIES SOUGHT BY ICC HAVE BEEN IN THE HIGH EMPHASIS VIOLATION CATEGORY.



[a]A key distinction between a criminal and civil violation is that the former exposes the accused to a possible jail sentence in addition to a fine. Data from ICC Headquarters summaries of quarterly regional Reports.

CIVIL AND CRIMINAL CASES COMBINED[a]



- WHILE TOTAL CIVIL AND CRIMINAL PENALTIES DIPPED IN 1984, THE 1983 LEVEL WAS RESUMED IN 1985.

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[a]Data from ICC Headquarters summaries of quarterly regional reports.

[b]Low emphasis cases in fiscal years 1983 and 1984 include both unauthorized property transportation (low emphasis) and unauthorized passenger transportation (high emphasis) because ICC data for 1983 and 1984 did not differentiate between property and passenger authority violations. However, other data show that most of the unauthorized transportation in 1983 and 1984 involved property (low emphasis).

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